IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.951 OF 2006

Shri Purandhar Bollu Pujari & Ors. ...Appellants

Versus

Pune Municipal Corporation & Ors. ...Respondents

Shri Amogh P. Paralikar for the Appellants.

Shri R.G.Ketkar for the Respondent No.1.

CORAM : ABHAY S.OKA, J.
DATED : JULY 05, 2007.

P.C.:

1. Heard the learned Advocates appearing for the parties. The Appellants in the Second Appeal are the original Plaintiffs. The Appellants-Plaintiffs filed a civil suit for challenging the notice issued under section 89 of the Maharashtra Regional and Town Planning Act, 1966. The challenge in the suit is mainly on the ground that the notice issued by the first Respondent-Corporation is on the footing that a Town Planning Scheme under the provisions of the said Act of 1966 came into force on 15th July, 1989 and the said Town Planning Scheme was not at all legal and valid. The suit was contested by the Respondents. The trial Court dismissed the suit and in Appeal, the decree passed by the trial Court has been confirmed.

2. The learned Advocate appearing for the Appellants submitted that the Arbitrator appointed by the State Government submitted a draft scheme to the State Government on 06th March, 1981. He submitted that within a period of four months specified in subsection 1 of section 86 of the said Act of 1966, the State Government could have either sanctioned the scheme or could

have extended the period within which sanction could have been granted. He submitted that the State Government purported to issue a notification date 15th June, 1989 by which the State Government purported to extend the period for sanctioning the scheme. He stated that in concluding paragraph of the notification, the date up to which the period was extended is not at all mentioned and the said date is kept blank. He, therefore, submitted that there was no valid exercise of power of grant of extension by the State Government and therefore, the scheme purportedly brought into force by notification dated 15th July, 1989 was illegal and therefore, the same could not have been acted upon. He placed reliance on a decision of the Apex Court in the case of Dattatraya Moreshwar Vs. The State of Bombay & Ors. (A.I.R 1952 Supreme Court Page 181).

3. I have considered the submissions. Section 86

of the said Act of 1966 reads thus:

> "86. (1) The State Government may, within a period of four months from the date of receipt of the final scheme under section 82 from the Arbitrator or within such further period as the State Government may extend, by notification in the Official Gazette, sanction the scheme or refuse to give such sanction provided that in sanctioning the scheme the State Government may make such modifications as may in its opinion be necessary, for the purposes of correcting an error, irregularity or informality.
>
> (2) If the State Government sanctions such scheme, it shall state in the notification-
>
> (a) the place at which the final scheme is kept open to inspection by the public [and also state therein that copies of the scheme or extracts therefrom certified to be correct shall, no application, be available for sale to the public at a reasonable price];
>
> (b) a date (which shall not be earlier than one month after the date of the publication of

the notification) on which all the liabilities created by the scheme shall take effect and the final scheme shall come into force:

. Provided that, the State Government may, from time to time, postpone such date, by notification in the Official Gazette, by such period, not exceeding three months at a time as it thinks fit.

(3) On and after the date fixed in such notification, a town planning scheme shall have effect as if it were enacted in this Act".

4. The draft scheme was received by the State Government for approval on 06th March, 1981. The section authorises the State Government to grant or refuse the sanction to the scheme within a period of four months from the date of receipt of the scheme or within such further period as the State Government may extend. It is not possible to accept the contention that even the power to extend the time should have been exercised only within the period of four months. There is no such restriction put by section 86. The only question to be considered is whether the State Government had exercised the power to extend the time

and whether the scheme was sanctioned within the time extended by the State Government.

5. A reliance is placed by the Advocate for the Appellant on the following portion of the notification dated 15th July, 1989:

> "Now, therefore, in exercise of the powers conferred by Sub section (1) of section 86 of the said Act, the Government of Maharashtra hereby extends the period for sanctioning the said scheme for a period upto and inclusive of...."

The contention of the Appellant is that the date is kept blank in the notification. Hence, there was no extension granted by the State Government.

6. However, in the earlier part of the said notification, there is a recital to the following effect:

> "And whereas, it is expedient to extend the period for sanctioning the said scheme by a period up to and inclusive of 15th July, 1989".

7. It is obvious that the notification dated 15th July, 1989 clearly states that it is expedient to extend the period for sanctioning the scheme up to and inclusive of 15th July, 1989. Therefore, the failure to refer to the extended period in later part of the notification is obviously not fatal because by the said notification dated 15th July, 1989, the State Government clearly intended to exercise the power of extending the period for sanctioning the scheme up to and inclusive of 15th July, 1989. The scheme has been sanctioned on 15th July, 1989 and there is no dispute about this factual aspect.

8. The reliance placed by the learned Advocate for the Appellant on the decision of the Apex Court in the case of Dattaraya Moreshwar (supra) will not help the Appellants. The Apex Court was considering the scope of the provisions of the Preventive Detention Act, 1950 in the context of the power of the appropriate Government under the provisions of the said Act of 1950. The said Act of 1950 gives very wide powers to the detaining authority. There is a power to revoke or modify any order of detention at any time and the power to extend the period of detention. In that context the Apex Court has observed that the power to extend the period of detention must be naturally exercised before expiry of

the original period of detention.

9. There is no dispute that the scheme was sanctioned within the time extended by the State Government. I find no error in the view taken by the Courts below and especially the Appellate Court. No substantial question of law arises. Second Appeal is accordingly dismissed. No orders as to costs.

10. The learned Advocate appearing for the Appellants at this stage prays that ad-interim relief granted by this Court earlier may be extended. The said request is opposed by the Advocate appearing for the first Respondent.

11. Considering the fact that ad-interim relief is operative from 31st August, 2006, the said ad-interim relief will continue to operate for a period of twelve weeks from today subject to condition that the Appellants will maintain status-quo in all respects in respect of the property subject matter of the dispute.

JUDGE